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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,799	03/30/2005	Lee Ann Olson	2866(203-3509)	5362
50855	7590	11/14/2007		
COVIDIEN 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473			EXAMINER LOPEZ, MICHELLE	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 11/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,799

Applicant(s)

OLSON ET AL.

Examiner

Michelle Lopez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-32,37-38 is/are rejected.
- 7) ☒ Claim(s) 33-36 and 39-41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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DETAILED ACTION

This action is in response to the amendment filed on 9/19/07.

New claims 39-41 have been added.

DOUBLE PATENTING REJECTION

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 21 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 2007/0034670.

Claim 32 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26 and 48 of copending Application No. 2006/0016853.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-25, 30, and 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Green et al. 5,312,023.

Green discloses a surgical stapler comprising a tool assembly including a cartridge assembly 58 having a plurality of staples and an anvil assembly 56, the anvil assembly being movable in relation to the cartridge assembly between open and approximated positions, a shaft 60, and an intermediate pivot member via 422 pivotally secured to the tool assembly about a first pivot axis via 262 and pivotally secured to the shaft about a second pivot axis at 428 as shown in figs. 16,28,31, the first pivot axis being substantially orthogonal to the second pivot axis as (claim 21); a dynamic clamping member as shown in Fig. 22 positioned to translate axially through the tool assembly to eject the plurality of staples from the cartridge (claim 22); wherein the plurality of staples are aligned in a plurality of linear rows as shown in Figs. 17-18 (claim 23); a clamping collar 400 as recited (claim 24); a sled 290 which is movable with the dynamic clamping as recited (claim 25) and has an angled surface (claim 30).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-29 and 31, are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. 5,312,023 in view of Milliman 5,865,361.

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Green discloses a surgical stapler with a dynamic clamping member as shown in Fig. 22, but does not disclose Wherein said dynamic clamping member includes a first mechanical interface which sliding engages the anvil assembly and a second mechanical interface which sliding engages the cartridge assembly, the first and second mechanical interfaces being in substantially vertical registration relative to one another. However, Milliman teaches a surgical stapler comprising a tool assembly 17 including an anvil 20, a cartridge 18, and a dynamic clamping member as recited (see Figs. 45,49,51-52) for the purpose of uniformly maintaining a gap between tissue contacting the anvil and the cartridge during stapling. It would have been obvious to one having ordinary skill in the art to have provided Green's dynamic clamping member with a first and second mechanical interfaces as taught by Milliman to maintain a uniform gap between tissue contacting the anvil and the cartridge during stapling.

Milliman also shows wherein the first mechanical interface includes a pin 286 which translates within a slot disposed within an interior of the anvil assembly as shown in Figs. 51-52 (claim 27); wherein said slot includes a generally T-shaped cross section as shown in Fig. 21 (claim 28); wherein the second mechanical interface includes a flange 285 as recited (claim 29).

With respect to claim 31, Milliman also teaches wherein the tool assembly 17 is part of a disposable loading unit 16.

Allowable Subject Matter

Claims 33-36 and 39-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The arts of record fail to disclose a surgical stapler, wherein a pulley operatively associated with a dynamic clamping member to effect movement of the dynamic clamping member from a first position to a second position.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicant contends that Green's cartridge and anvil assembly are limited to articulation about a single pivot axis, whereas the tool assembly as recited in claim 21 is capable of articulation about a first and a second pivot axis, which is orthogonal to the first pivot axis. However this is not persuasive. Claim 21 merely disclosed a first and a second pivot axis, wherein the first axis is orthogonal to the second axis. Note that such articulation of said cartridge assembly and anvil assembly about both the first and second pivot axis are not disclosed. Furthermore, Green does show such first and second pivot axis as discussed above.

Applicant also contends that Green fails to disclose the clamp collar positioned adjacent the proximal end of the cartridge assembly and the anvil. This is found not persuasive since Green does show such clamp collar 400 as claimed as shown in figs. 29-30.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Co-pending application 2007/0108252 and US 7,159,750 were considered.

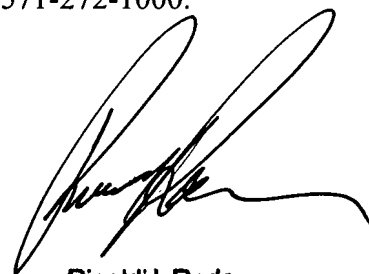
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ML/
Patent Examiner

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a large, sweeping loop at the end.

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700